(2)

No. 91-475

In The

Supreme Court of the United States

October Term, 1991

METROPOLITAN LIFE INSURANCE COMPANY,

Petitioner,

v.

BEATRICE HINDS CARLAND,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION

ANDREW L. OSWALD
Counsel of Record

JESS W. ARBUCKLE
MARTINDELL, SWEARER & SHAFFER
Attorneys at Law
400 Wiley Building
P.O. Box 1907
Hutchinson, KS 67504-1907
Telephone: (316) 662-3331
Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Did Petitioner Metropolitan Life Insurance Company breach its fiduciary duty under a plan (insurance policy) governed by the Employee Retirement Income Security Act of 1974 [U.S.C. Section 1001-1461], by not paying benefits pursuant to an unambiguous designation of beneficiary within a 1964 divorce decree and property settlement, of which it had notice and possession of the decree.

2. Did the Tenth Circuit Court of Appeals properly interpret the structure and purpose of the Employee Retirement Income Security Act of 1974 when it extended the qualified domestic relations order exception to ERISA preemption to employee "welfare" benefits?

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

STATUTES

TABLE OF AUTHORITIES – Continued

STATEMENT OF THE CASE

A. FACTS MATERIAL TO THE QUESTIONS PRESENTED.

Ralph C. Carland, as an eligible employee of Metropolitan Life Insurance Company (Metropolitan), was covered for group life insurance under Metropolitan Group Policy No. 50 G.L., Certificate No. 134181 (group term policy).[1] The group policy is part of an employee welfare benefit plan governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. Section 1001, *et seq.*

Mr. Carland and the Respondent herein, Beatrice Carland, were divorced on September 4, 1964.[2] The journal entry of divorce decree reads in pertinent part as follows:[3]

> The court further finds that the parties hereto have entered into an agreement which contains the mutual covenants of the parties hereto with regard to that for which they would jointly ask the court to decree regarding child custody and visitation, child support, alimony, property division and expenses. An executed copy of said agreement is attached hereto and made a part hereof . . .

---

[1] Exhibits referred to and included in the Appendices are abbreviated "App".

[2] The Carlands were divorced 10 years prior to the enactment of Employment Retirement Income Security Act of 1974 and 20 years prior to the enactment of the Retirement Equity Act of 1984.

[3] Journal Entry and Property Settlement Agreement at App. A.

> [I]n accordance with said agreement *Defendant is ordered to pay the premiums on, and to make irrevocable designation of Plaintiff as the sole primary beneficiary under and of the policies of insurance on the life of Defendant listed in Schedule "A"* appended to the Settlement Agreement to which reference has been made herein. (Emphasis added).

SCHEDULE "A"

Policies of Insurance on life of Ralph C. Carland

17 083 285A	Metropolitan Life Ins. Co.	$ 5,000.00
22 127 306A	Metropolitan Life Ins. Co.	$10,000.00
21 300 423	New York Life Ins. Co.	$ 5,000.00
21 372 985	New York Life Ins. Co.	$ 5,000.00
Ctf. 134181	Metropolitan Group Ins.	Current value, less $1,000.00

At the time the property settlement was negotiated, Beatrice Carland was a homemaker and Ralph Carland was an employee of Metropolitan, holding the position of District Manager, Hutchinson District Office.

In 1974, Mr. Carland, now a Metropolitan employee in New York, forwarded a letter dated February 15, 1974, to Defendant. In a letter made a part of the employee files, Mr. Carland said the following:

> Please note that the attached schedule is from my divorce decree of September 4, 1964, Case 19926. The decree provides that my Group Life Insurance is designated to go to my divorced wife – Beatrice Hinds Carland – in the amount of the current value, less $1,000.00 as of the date of the decree.

> Therefore, I direct the Company to make the following beneficiary designations:
>
> Primary beneficiaries:
>
> BEATRICE HINDS CARLAND – divorce wife, $13,000.00 (current value, less $1,000.00 as of date of divorce, September 4, 1964)
>
> OLIVE KOHLMEYER CARLAND – present wife, Group Insurance over and above $13,000.00
>
> Secondary Beneficiaries:
>
> RALPH C. CARLAND, JR. and CHRISTOPHER BRIEN CARLAND (share and share alike of all to survivor)
>
> I further request that the beneficiary designation be effective as of the date of this memo of record. *App. "B"*

It is an uncontroverted finding of the District Court that Metropolitan had notice and possession of the divorce decree no later than February 15, 1974.[4]

On or about March 1, 1974, contrary to the irrevocable designation of beneficiary within the Journal Entry and Property Settlement Agreement, Mr. Carland, an employee of Metropolitan, designated Olive Carland, his second wife, as the sole and primary beneficiary of the subject group life insurance policy. *App. "C" On the same*

---

[4] This fact was not controverted by Metropolitan within Respondent's Motion for Summary Judgment and was deemed admitted by the trial court under D. Kan. Rule 206(c). Metropolitan now argues differently within its Petition for Writ of Certiorari, see page 24, paragraph 2.

day, Mr. Carland executed a designation of beneficiary on the subject group life insurance policy making Beatrice Carland a "primary" beneficiary for $13,000.00, and Olive Carland a "primary" beneficiary for the amount in excess of $13,000.00. It is unclear which designation was completed first. *App. "D"*.[5]

W. E. Sciannamea of Metropolitan's Benefit Administration Services Section acknowledged that Mr. Carland executed designation of beneficiaries once on February 15, 1974 and on two separate occasions on March 1, 1974. *App. "E"*.

---

[5] Within Metropolitan's statement of the case, Metropolitan alleges that only one of the three conflicting beneficiary designation forms prepared between February 15, 1974 and March 1, 1974 was ever endorsed. The March 1, 1974 beneficiary designation wherein Olive Carland was designated as a sole beneficiary was not "endorsed" but was approved by the group life claims (death) section. After a complaint was filed by Beatrice Carland, David G. Sobel, a benefits manager in the benefits administration services department located the second designation dated March 1, 1984. This designation was apparently "endorsed" by Mr. Sobel according to Metropolitan. Apparently, all designations of beneficiary at issue, including the divorce decree, were made a part of its corporate files, without reference to whether they were properly "endorsed". The process used for screening endorsements undermines the materiality of Metropolitan's "endorsement" requirement as the staff within the Metropolitan Group Claims (death) section asked for assistance as to which designation of beneficiary it should honor as it was unclear as to which was first delivered. This inquiry made no reference to indicate designations were being screened for appropriate endorsements. *See* letter of Sciannamea at Addendum E and memo of Lynn Box at Addendum G. Metropolitan did not bring this factual distinction of "endorsement" before the District Court nor did it raise such distinction before the Tenth Circuit.

Ralph Carland died April 9, 1987. On April 10, 1987, Beatrice Carland gave written notice to Metropolitan of her claim to the entire proceeds of the insurance policy under the aforementioned divorce decree and enclosed a copy of the relevant divorce decree provisions. The Tulsa Metropolitan office received the letter on April 12, 1987. On April 14, 1987, Metropolitan's Tulsa office sent Beatrice Carland claim application forms which required a death certificate.

On May 4, 1987, while waiting for receipt of the death certificate requested from the New York City Bureau of Vital Records, Beatrice Carland spoke with Metropolitan's Wichita district office. She was assured by that office that she was the beneficiary of the policy, but that the company needed a death certificate in order for it to formally process her claim.

On May 6, 1987, Beatrice Carland again spoke with the Wichita office, requesting information as to the policy's value. At the time of Mr. Carland's death on April 9, 1987, twenty-three years after the divorce decree, the value of Mr. Carland's life insurance under the group policy was $51,480.00. On May 8, 1987, Beatrice Carland was informed by Wilma Sandoval of Metropolitan's Wichita office, that a call to Metropolitan's New York office had revealed that the company intended to pay another beneficiary. At this time, Wilma Sandoval informed the New York office that the Wichita office was in possession of the divorce decree which designates Beatrice Carland as the sole and irrevocable beneficiary of the proceeds of the policy. On May 11, 1987, Beatrice Carland sent a letter to Metropolitan's offices and enclosed a certified copy of the divorce decree. On May

13, 1987, Beatrice Carland sought the intervention of the Kansas Insurance Commissioner's Office.

On or about May 22, 1987, after having been notified six weeks earlier of Beatrice Carland's claim pursuant to the 1964 divorce decree, and after Metropolitan employees had assured Beatrice Carland that she was beneficiary of the policy, Metropolitan paid over to Olive Carland all of the insurance proceeds of the subject policy, plus interest.

On or about June 16, 1987, Kansas Insurance Commissioner Fletcher Bell corresponded with Beatrice Carland, advising her that her file had been assigned with the Office of Consumer Assistance.

At some date prior to September 11, 1987, a *second* March 1, 1974 designation, and third assignment between the dates of February 15, 1974 and March 1, 1974, surfaced from when the death claim was originally processed. Mr. Sobel, a benefits manager of the benefits administration and services department of Metropolitan, forwarded the late found designation (second designation dated March 1, 1974) and a copy of the Kansas divorce decree to Lynn Box, Group Nationals Account, Group Life Claims (death) Department, on September 11, 1987, and September 25, 1987, respectively. *App. "G"* It is unclear which March 1, 1974 designation was completed first. *App. "F"*

On September 21, 1987, Mr. Reiner of the Kansas Insurance Department advised Beatrice Carland that his department had now received a report from Metropolitan. Prior to this date, Metropolitan contacted Olive

Carland and sent her a copy of the divorce decree. Metropolitan requested that Olive Carland reimburse $13,000.00 to Metropolitan. Metropolitan paid Beatrice Carland $13,623.99, claiming such represented her share under the 1964 divorce decree plus interest.[6] App. H.

Thereafter, Beatrice Carland filed a lawsuit against Metropolitan contending that she should have received all of the insurance proceeds, $51,480.00, from the group life policy rather than the $13,000.00 plus interest paid her.

B. BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE.

Respondent, Beatrice Hinds Carland, commenced this civil action to establish her right to the full $51,480.00 (plus interest) in benefits payable upon Mr. Carland's death by filing a summons and petition with the district court of Reno County, Kansas, on November 10, 1988. The other named beneficiary, Olive Kohlmeyer Carland, did not contest the payment. Metropolitan removed the

---

[6] Within Metropolitan's Petition for Writ of Certiorari, Metropolitan argues it can only rely upon its own designations of beneficiary "it endorses". It presented its position as being based on both the Journal Entry and one of the March 1, 1974 designations in correspondence with Mrs. Carland (see App. H). Metropolitan, in its arguments to the Court of Appeals, argued in the alternative, that its interpretation of the Journal Entry was correct or that it only need rely on the designation it had "endorsed" Metropolitan interpreted Mr. Carland's intent from documents that were inconsistent, prepared 10 years apart and at a point in time (1974) when the objects of Mr. Carland's bounty had changed.

action the Federal District Court for the District of Kansas, by Removal Petition, dated and filed December 21, 1988. Jurisdiction of the District Court was predicated on 28 U.S.C. Section 1331 (federal question), in that Respondent's complaint "relate[s] to" an employee benefit plan within the meaning of ERISA; 1332 [diversity of citizenship], in that Petitioner is a New York Corporation while Beatrice Carland is a citizen of the State of Kansas and the amount in controversy exceeded the sum of $10,000.00[7]; and 1441 [actions removable generally], in that Beatrice Carland commenced this civil action in the state courts of Kansas, and petitioner removed it, within the time provided by law, to the District Court for the District of Kansas, which embraced the place where the action was pending, based on the original jurisdiction of the United States district courts of action arising under ERISA and diversity of citizenship.

Metropolitan moved to dismiss and for summary judgment. Respondent cross-moved for summary judgment. The District Court denied Metropolitan's motion for summary judgment but granted the cross-motion of Respondent, finding that the 1964 Kansas journal entry and property settlement agreement controlled the payment of benefits of Metropolitan's employee welfare plan. Judgment was entered accordingly on December 27, 1989. 727 F.Supp. 592. The Court of Appeals for the Tenth Circuit affirmed the decision of the District Court, finding that ERISA's structure and purpose provided a sufficient basis to provide a parallel common law exemption to

---

[7] That was the required jurisdictional amount at the time.

ERISA's preemption for welfare benefit plans consistent with that provided for in pension plans at 29 U.S.C. Section 1056(d)(3)(B)(i), finding that the journal entry should be treated as a qualifying domestic relations order. Judgment was entered to that effect on June 4, 1991. 935 F.2d 1114.

The Tenth Circuit denied Metropolitan's motion for rehearing and suggestion for rehearing en banc by order June 21, 1991. Metropolitan Life now seeks review of the Tenth Circuit's ruling.

SUMMARY OF THE ARGUMENT

In this cause, a corporate fiduciary was called upon to review an irrevocable designation of beneficiary within a 1964 divorce decree that pre-dated the enactment of ERISA by ten years. Beatrice Carland therein was made the "sole and primary beneficiary" under the specified policy. Both the federal district court and the Tenth Circuit in their findings found that the terms of the journal entry and property settlement agreement to be unambiguous. Metropolitan argues that the definition of "beneficiary" under ERISA and the provisions of its own plan, allow it to look no further than the designations of beneficiaries "on its own forms." Metropolitan also urges that Congress also intentionally chose not to protect insurance policies from potential fiduciary error or abuse of discretion when it amended the ERISA Act of 1974 by the Retirement Act of 1984 wherein Congress provided for an exception to federal preemption under ERISA at Section

1144(b)(7) by the creation of qualified domestic relations orders at Section 1056(d)(3) of ERISA.

The fiduciary duties set out in ERISA, as well as the duties to gather information and the inferred duty to act upon material information relating to the insurance policy, required Metropolitan to honor the journal entry.

The journal entry of divorce was the appropriate vehicle for Ralph and Beatrice Carland to make an irrevocable designation of beneficiary at the time of the divorce. The 1964 divorce decree created a vested property right.

In this case, the corporate fiduciary had actual notice and possession of the divorce decree in 1974. The corporate file or files also contained two separate, and conflicting designations of beneficiary dated March 1, 1974. Metropolitan Life, acting in its fiduciary capacity, chose not to honor the unambiguous property settlement agreement, but chose to honor one of the conflicting March 1, 1974 designations of beneficiary.

The actions of Metropolitan in paying out the benefits under the policy is of great concern. The record provides that the policy proceeds had been paid out incorrectly to Olive Carland (Mr. Carland's second wife), then only partially recovered. Metropolitan, as the joint fiduciary/employer/insurance company, clearly had a conflict of interest with Beatrice Carland that required it to obtain the return of all the monies and seek direction from a court as to distributing the proceeds from the policy.

The District and Circuit Courts decision is not flawed. The District Court and Tenth Circuit Court

reviewed the state court action originally brought by Beatrice Carland and determined that Respondent's cause of action was properly removed under 29 U.S.C. Section 1144(a) and that the civil actions provisions of ERISA at 29 U.S.C. Section 1132(a)(1)(B) and the beneficiary's action to recover benefits due her under the terms of her plan was properly characterized as a federal claim.

This Court recently in *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, at 115 (1989) provided that denial of benefits challenged under ERISA is reviewed under a de novo standard unless the benefit plan gives the administrator discretionary authority to construe the terms of the plan. The District Court and Circuit Court determined that the group policy in question did not grant Metropolitan Life such discretion.

District Court and the Tenth Circuit Court of Appeals reviewed the distinctions that must be made between a "pension" and "welfare" plans, as they were treated differently within the ERISA Act of 1974, as amended. The Tenth Circuit determined that the policies and purposes of Congress that lead to an exception to the anti-alienation provision for domestic relations orders were a proper basis to consider in reviewing the determination of Metropolitan. The Tenth Circuit further determined that the anti-alienation provisions of ERISA do not apply to welfare benefit plans. The Tenth Circuit in reviewing the divorce decree, determined that the 1964 divorce decree met the listed requirements of a QDRO under Section 1056(d)(3) that provide for an exception to the anti-alienation provisions of ERISA for pension plans. The Tenth Circuit construed the intent and purpose of ERISA in Section 1144(b)(7) and Section 1056(d)(3)(B)(i) to exempt

divorce decrees that designate beneficiary status for both pension and welfare plans meeting the statutory requirements of the QDRO provisions of ERISA.

Metropolitan argues that the dictates of ERISA requiring uniformity and ease of administration do not allow it or require it to consider the 1964 divorce decree. On the contrary, Metropolitan misinterpreted the 1964 divorce decree, argued at trial and before the 10th Circuit its interpretation was correct, and now argues neither ERISA or its policy require it to consider the 1964 divorce decree. The Tenth Circuit determined that not only do the fiduciary duties under ERISA Section 1104 require that a fiduciary discharge its duties solely in the interest of the plan participants and beneficiaries in paying benefits, but also it is the fiduciary's duty to pay the appropriate beneficiary.

Section VI(D) of the policy requires the insured, Ralph Carland, and his employer, Metropolitan Life to furnish "all information . . . which [Metropolitan Life] Insurance Company may reasonably require . . . with regard to the happenings of any event . . . affecting or relating to the life insurance of any employee." Metropolitan, as employer fiduciary under its policy/plan, has a duty to consider the 1964 divorce decree in its files.

Metropolitan's actions as fiduciary, on their face appear arbitrary and governed largely by hindsight. Persuasive common law and authority indicate that an insured's right to change the beneficiary of an insurance policy on his life may be restricted by divorce decree or property settlement agreement.

Metropolitan argues the Tenth Circuit's determination to be in conflict with analogous common law of the Sixth and Eleventh Circuits. This is not correct. The cases argued to be conflicting by Metropolitan both involve divorce decrees, but are divorce decrees that would not have met the statutory guidelines outlined at Section 1056(d) as being QDRO's, and are therefore not controlling, and not in conflict with the Tenth Circuit's decision.

The Tenth Circuit's decision conforms with federal common law and the structure and purpose of ERISA. The Petition for Writ of Certiorari should be denied.

ARGUMENT FOR DENYING PETITION

I. RESPONDENT'S CLAIM AS A BENEFICIARY TO RECOVER BENEFITS DUE UNDER 29 U.S.C. SECTION 1132(a) IS NOT SUPERSEDED BY THE ERISA PREEMPTION CLAUSE (29 U.S.C. SECTION 1144(a)).

The Employment Retirement Income Security Act of 1974, as amended (ERISA) was enacted by Congress to protect working men and women from the abuses in the administration and investment of retirement plans and employee welfare plans. With only a few exceptions, ERISA applies to any "employee benefit plan" which is established or maintained by an employer or employee organization engaged in commerce or any industry or activity involving commerce.

In this matter, the parties agree that the case is governed by ERISA, that Beatrice Carland is a beneficiary as defined under ERISA and that the subject life insurance policy is a welfare plan, as defined by ERISA.

ERISA at 29 U.S.C. Section 1144(a) provides that ERISA is to supersede any and all state laws as far they may now or thereafter relate to any employee benefit plan. The Supreme Court has stated that the preemption clause of ERISA is "deliberately expansive" and should be given its "broad, common sense meaning".

a. THE CLAIM WAS PROPERLY REMOVED TO FEDERAL COURT AND STATED A CLAIM UNDER ERISA SECTION 1132(a)

In this matter, both the District Court and the Tenth Circuit determined that Beatrice Carland's claim to enforce the terms of the divorce decree and insurance policy is a state law claim that would convert to a federal claim only if the claim is preempted by ERISA and within the scope of ERISA's civil enforcement provisions. Congress has manifested an intent that related causes of action be preempted by ERISA, 29 U.S.C. Section 1144(a), and displaced by ERISA's civil enforcement provisions, 29 U.S.C. Section 1132(a); therefore any related civil complaint is necessarily federal in character and properly removable.

The Supreme Court in *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 60 (1987) found that the preemptive force of ERISA, 29 U.S.C. Section 1144(a), to be so powerful that it displaced any state cause of action which "relates to" any benefit plan as described in 29 U.S.C. Section 101(a) and not exempt under 29 U.S.C. Section 1001(b), and that the state law complaint is to be recharacterized as an action arising under federal law as

allowed by ERISA Section 502(a) [29 U.S.C. Section 1132(a)]

b. THE STANDARD OF REVIEW

At trial and before the Tenth Circuit, Metropolitan contended that the courts should review a beneficiary determination for an abuse of discretion by the plan administrator. In *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989), this Court held that a denial of benefits challenged in ERISA is reviewed under de novo standard unless the benefit plan gives the administrator discretionary authority to construe the terms of the plan. The District Court and Tenth Circuit found the group policy did not grant Metropolitan Life such discretion.

c. THE STATUTORY FRAMEWORK OF ERISA

In evaluating Respondent's claim, both the Tenth Circuit and the Kansas District Court noted that ERISA, at 29 U.S.C. Section 1001 et seq. was a relatively new and developing area of the law. Both the District Court and the Tenth Circuit Court of Appeals in their analyses carefully distinguished between "employee welfare benefit plans" (welfare plans) and "employee pension benefit plans". Metropolitan infers the District Court and the Tenth Circuit misread amendments to ERISA provided in the Employee Retirement Act of 1984 and failed to distinguish between welfare plans and pension plans. The Courts' analyses say otherwise.

The Courts noted that employee pension plans, which entail management of funds of money and thus require the establishment of trusts, received extensive codification of mandatory provisions.

Within ERISA, Congress provided many key terms and in essence provided written congressional terms for the parties.

The sections of the statute which applies solely to pension plans, welfare plans being expressly excluded, legislate mandatory requirements for covered plans. ERISA Sections 1051 through 1086, for instance, where welfare plans were expressly excluded by Section 1056(d)(1), set forth standards for creation of vested rights and pension plans, provide the conditions under which rights become nonforfeitable, set accrual requirements, state how the plans shall be funded, as well as setting forth numerous other requirements. It should be understood that such sections are best understood as creating express contract terms that are mandated by law when parties establish such plans.

Within the structure of ERISA, sections of the statute apply to both pension plans and welfare plans. Sections 1021 through 1030, for instance, establish reporting and disclosure requirements for the plans. Sections 1101 through 1141 legislate the fiduciary responsibilities of people who create or manage the plans. Other sections provide for criminal enforcement (Section 1131), civil enforcement (Section 1132), while Section 1140 makes it unlawful to interfere with the rights protected by statute.

Congress included welfare benefit plans within the scheme of ERISA, but did not provide an extensive array

of mandatory provisions as it did for pension plans. The Courts have accepted the implication that parties retain a greater degree of freedom to contract between themselves as to what benefits will be provided by welfare plans, when and how they will be provided, and what rights the respective parties have under the plans, as well as the right to negotiate other provisions as they see fit. In substance, welfare benefit plans remain private contracts, with the parties determining what the express terms are. Because they are included in ERISA, determination of the meaning of their terms as well as the means for their enforcement have become a matter of federal common law. This law will only be fleshed out for welfare benefit plans as decisions are reached in developing a federal common law to govern them. The statute provides the framework but courts must provide the substantive law. *See Vogel v. Independence Federal Sav. Bank*, 692 F.Supp. 587, 591-92 (D.Md. 1988). *See also Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987).

d. THE DISTRICT COURT AND TENTH CIRCUIT INTERPRETED ERISA'S STRUCTURE AND PURPOSE TO PROVIDE AN EXCEPTION TO ERISA'S PREEMPTION RULES SECTION 1144(b)(7) TO ALL QUALIFYING DOMESTIC RELATIONS ORDERS WHETHER THEY INVOLVE A PENSION OR WELFARE BENEFIT PLAN.

At trial the parties, Beatrice Carland and Metropolitan, agreed that the life insurance policy in question was a part of an employee welfare benefit plan, not a pension plan.

The Tenth Circuit found that the anti-alienation provision at 29 U.S.C. Section 1056(d)(1), does not apply and that the policy in question like any welfare benefit plan, may be freely assigned or encumbered. The Court further found in its findings that the policies and the purposes that led Congress to create an exception to the anti-alienation provisions for domestic relations orders may be a factor for the court to consider in applying the appropriate federal common law to the outcome of the case.

In determining whether ERISA pre-exempts the divorce decree, the Tenth Circuit looked at Congressional intent. The Court considered whether Congress' command is expressly stated in the statutes language or implicitly contained in the structure and purpose. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977).

The Tenth Circuit in reviewing the statutory language of ERISA, assumed the ordinary meaning of the language expressed the Congressional intent. *See FMC Corp. v. Holliday*, 111 S.Ct. 403, 407 (1990). The Tenth Circuit noted that ERISA defines "state law" subject to preemption to include "all state laws, decisions, rules, regulations, or other state action having the effect of law, of any state". 29 U.S.C. Section 1144(a). Although this language apparently would include claims based on divorce decrees issued by state courts, Subsection (b)(7) explains the preemption clause "shall not apply to qualified domestic relations orders [QDROS] within the meaning of section 1056(d)(3)(B)(i) of this title." Section 1144(b)(7). Prior to the Retirement Equity Act of 1984 (REA), ERISA Section 206(B) prohibited any assignment or other alienation of a

participant's benefits, theoretically preventing a divorcing spouse from obtaining access to a participant's benefits prior to receipt by the participant. However, under circumstances much like those reflected here, many courts found and applied an exception to this ERISA requirement in a divorce or other family support situation. *See* e.g. *Stone v. Stone*, 450 F.Supp. 919 (N.D. Cal. 1978), *Aff'd* 632 F.2d 740 (Cir. 1980), *cert. denied*, 453 U.S. 922 (1981).

In reviewing section 1056(d), the Tenth Circuit clearly affirmed the District Court's analysis that the reference in the preemption clause to Section 1056(d)(3)(B)(i) did not restrict application of the statutory preemption exception only to pension benefit plans. The Tenth Circuit interpreted the exceptions to be such that it could apply to all qualifying domestic relations orders whether they would involve a pension or welfare benefit plan. Metropolitan in its brief cites any number of references from sections of ERISA from sections 1051 through 1086 which were drafted for the benefit of pension plans. Beatrice Carland submits that statutory language Petitioner seeks to find as restrictive is language meant to empower under the statute, and does restrict or deny the application made by the Tenth Circuit Court of Appeals.

The Tenth Circuit cites that the general goals of ERISA would be served by exempting divorce decrees meeting the statutory requirements under 1056(d)(3)(B)(i) from ERISA preemption for both welfare and pension plans. Divorce decrees meeting the requirements provide all necessary information to determine the identity of a beneficiary without creating unreasonable administrative burdens for the plan administrator.

Metropolitan has argued within its brief that Congress did not intend for welfare benefits plans to have such built in protection.[8] Such argument is unreasonable on its face and fails to consider the implicit structure and purpose of ERISA.

Metropolitan would urge that the Carland decision sets an impossible standard that would be costly to administer. A parallel standard similar to that provided for in the QDRO section would effect a single standard and desired uniformity in clear, concise standards meant to convey necessary information to administrators for effective administration while the same time protect beneficiaries from the abuses evidenced within this very case.

e. METROPOLITAN BREACHED ITS FIDUCIARY DUTY UNDER THE PROVISIONS OF ERISA AND ITS OWN PLAN

Metropolitan contends payment of life insurance benefits according to a company's beneficiary designation forms satisfies any affirmative duty imposed by ERISA or the plan. Beatrice Carland would submit this position is offensive and contrary to the fiduciary provisions of ERISA at 29 U.S.C. Section 1104. ERISA states that a fiduciary shall:

> With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting under a like capacity and

---

[8] Page 24 of Metropolitan's Petition for Writ of Certiorari, page 24, paragraph 2.

> familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. *See* ERISA Section 44(a)(1)(B).

Metropolitan not only ignored the standard set forth within ERISA's fiduciary provisions, but that Metropolitan failed to conform its conduct with what was required within its own plan. Section VII of the group policy provides:

> Upon receipt by the Insurance Company of satisfactory proof, in writing, that any employee insured hereunder shall have died, the Insurance Company shall pay . . . to the beneficiary of record of the employee, the amount of life insurance . . . in force hereunder . . .

Further, Section VI(D) of the policy requires the insured, Ralph Carland, and his employer, Metropolitan Life, to furnish:

> "all information . . . which the [Metropolitan Life] Insurance Company may reasonably require . . . with regard to the happenings of any event . . . affecting or relating to life insurance of any employee."

The policy/plan provisions call for Metropolitan, as fiduciary, to investigate all potentially related documents. Because Metropolitan received the divorce decree and was on notice, the company had a duty to consider the decree as part of the record in determining the beneficiary of record under this ERISA governed plan.

f. METROPOLITAN BREACHED ITS FIDUCIARY DUTY UNDER ERISA BY FAILING TO CONSIDER THAT THE 1964 DIVORCE DECREE PREDATING THE ENACTMENT OF ERISA PROVIDED A VESTED EQUITABLE INTEREST IN THE INSURANCE POLICY.

It is a precept predating the enactment of ERISA that an insured's right to change the beneficiary of an insurance policy on his life may be restricted by a divorce decree or property settlement. *See* Couch on Insurance 2d, Section 28:41.

A divorce decree may effectively destroy the insured's right to make any change, and may give the beneficiary an equitable interest in the policies specified. If the insured agrees to designate a certain party as the irrevocable beneficiary of a policy, the beneficiary obtains a vested right which may not be defeated by any subsequent attempt to change the beneficiary. *Peckman v. Metropolitan Life Insurance Co.*, 415 F.2d 32, 10th Cir. (1969); *Metropolitan Life Insurance Co. v. Enright*, 231 F. Supp. 235 (1964). Any attempt to change the beneficiary would be viewed as a nullity, allowing the beneficiary to enforce his or her equitable rights. Couch on Insurance, Section 28:41.

For nearly 200 years, it has been recognized by the United States Supreme Court that the rights acquired by judgment are property rights and, as such, are protected by the 5th Amendment of the Constitution and cannot by taken without due process of law.

Beatrice Carland had vested rights in the provisions of the final divorce decree and the judgment obtained in Reno County, Kansas, on September 4, 1964.

This "well settled" legal principle (inviolability of vested rights) is one of the hundreds of reflections of the basic fairness and justice which have characterized the common law of England and the United States since its inception. The paramount importance which is attached by the common law to the protection of the integrity of final judgments, which finds one of its strongest examples in the doctrine of vested rights, also permeates such opinions as that of the Tenth Circuit which is the subject of the petition of Metropolitan for a writ of certiorari.

II. THE CASE LAW CITED BY METROPOLITAN LIFE AS BEING DISPOSITIVE AND IN CONFLICT WITH THE TENTH CIRCUIT OPINION IS NOT ANALOGOUS AND THEREFORE NOT CONTROLLING.

Metropolitan cites a recent Sixth Circuit decision, *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990), as support for its decision to disregard the divorce decree in determining the beneficiary of record. The *Parrott* decision involved the issue of whether a broad waiver of "any and all claims" against the other spouse in a divorce decree nullifies a decedent's pre-divorce designation of an ex-spouse as beneficiary.

The Tenth Circuit's opinion in this case directly responds to distinctions and concerns addressed in the Sixth Circuit's decision. The divorce decree in *Parrott*, with its general waiver provision, did not specifically

refer to the spouse's rights as beneficiary. Such decree would not be found to be a qualified domestic relations order under ERISA and qualify as a beneficiary designation. The Tenth Circuit noted within its opinion that one reason for the holding within *Parrott* was that the decree provided for a general waiver of claims and did not "specifically refer to the spouse's rights as beneficiary" in the ERISA plan. ERISA requires specific information in a divorce decree for the decree to escape preemption and qualify as a beneficiary designation for an ERISA governed plan. This designation took place in the case now before this Court.

The Tenth Circuit's opinion provides a framework upon which fiduciaries and administrators can rely in evaluating plans for distribution of welfare plan benefits. The Tenth Circuit confirmed in its opinion that it agreed with the Sixth Circuit that Congress intended ERISA plans to be uniform in their interpretation and simple in their application.

The second case Metropolitan has cited as a basis of conflict with the Tenth Circuit's opinion *Brown v. Connecticut General Life Ins. Co.*, 934 F.2d 1193 (11th Cir. 1991). In *Brown*, the divorce decree provided that the husband would maintain an ex-wife as beneficiary on a specified life insurance policy with his employer. The husband's employment was terminated as well as the group life plan referred to in the divorce decree. The husband was later employed with a different employer and was provided a different group life insurance package as a part of an employee benefit package. Upon the husband's death, his first wife sought the new policy proceeds where the

beneficiary designation of the policy provided the proceeds to go to the second wife. The district court determined that the second wife as the named beneficiary under the company's welfare benefit plan was entitled to the policy proceeds. In the *Brown* decision, the divorce decree would not qualify as a qualified domestic relations order as it would not properly identify the welfare benefits in question.

Beatrice Carland notes that from the record in *Brown*, the district court reviewed the determination of the fiduciary based upon the abuse of discretion standard. Since *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115, 109 S.Ct. 948, 956, (1989) was not cited, it would appear that the administrator retained discretionary authority to construe the terms of the plan, no such discretion was found in *Carland*.

Metropolitan argues the duty to pay proceeds to a beneficiary as provided in *Carland* imposes an impossible and burdensome obligation on plan administrators that conflicts with their fiduciary responsibility to preserve and protect the assets of the plan. This position by Metropolitan is at odds with federal common law which already requires the administrator of a pension plan investigate the marital history of a participant and determine whether a domestic relations order exists that could effect the distribution of benefits. 29 U.S.C. Section 1056 (*See Fox Valley and VIC. Const. Wkrs. Pension F v. Brown*, 897 F.2d 275 (7th Cir. 1990), *cert. denied*, 111 S.Ct. 57.

CONCLUSION

The Petition for Writ of Certiorari from the decision of the United States Court of Appeals for the Tenth Circuit should be denied. The Tenth Circuit Court of Appeals decision, in affirming the judgment of the District Court, is consistent with existing federal common law for ERISA matters and does not appear to conflict with any other circuit. The Tenth Circuit decision is consistent with the structure and purpose of the Employee Retirement Income Security Act of 1974, as amended. The opinion of the Tenth Circuit is consistent with *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 in its application of the de novo standard of review and this Court's application of trust principles to ERISA matters. It is well acknowledged in ERISA matters that federal common law in this area is now being fleshed out for welfare benefit plans as decisions are reached in developing a federal common law to govern them. Clearly, ERISA provides the framework but requires the federal courts to provide the substantive law.

WHEREFORE, Beatrice Carland respectfully requests that Metropolitan's petition be denied in its entirety and for such other and further relief as may deemed just and proper.

Respectfully submitted,

ANDREW L. OSWALD
Counsel of Record

JESS W. ARBUCKLE
MARTINDELL, SWEARER & SHAFFER
Attorneys at Law
400 Wiley Building, P.O. Box 1907
Hutchinson, KS 67504-1907
Telephone: (316) 662-3331
Counsel of Record for Respondent

Dated: Hutchinson, Kansas
November 21, 1991

APPENDIX A

Martindell, Carey, Hunter & Dunn
601 Wolcott Bldg.
Hutchinson, Kansas

IN THE DISTRICT COURT OF RENO COUNTY, KANSAS

BEATRICE HINDS CARLAND Plaintiff vs. RALPH C. CARLAND Defendant	Case No. 13926 (Filed Sep. 4, 1964)

Journal Entry

BE IT REMEMBERED that on this 4th day of September, 1964, the above entitled cause came regularly on for hearing, the Plaintiff being present in person and by her attorney, J. Richards Hunter of Martindell, Carey, Hunter & Dunn, and the Defendant appearing not though having duly entered his appearance herein and having waived service of summons. The Court finds that Defendant is not in the military service of the United States as defined by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and that no attorney or guardian ad litem is required but that the matter should be and hereby is ordered on for trial.

Plaintiff introduced her evidence by her own testimony and that of another witness. Having heard the evidence of the Plaintiff and the statements of counsel, the Court finds that the allegations of Plaintiff's petition

are true; that Plaintiff was at the time of filing the petition herein, and had been for more than one year prior thereto, as well as at the time of trial, an actual resident in good faith of Reno County, Kansas; that the Defendant was at the time of filing the action a resident of Reno, County, Kansas; that Plaintiff and Defendant were lawfully married on the 3rd day of February, 1941 in Oklahoma City, Oklahoma, and that to this union there have been born two children: Ralph C. Carland Jr., age twenty (20) years, and Christopher Brian Carland, age sixteen (16) years. The Court further finds that the Defendant has been guilty of extreme cruelty and that Plaintiff is entitled to an absolute divorce from Defendant.

The Court further finds that the parties hereto have entered into an agreement which contains the mutual covenants of the parties hereto with regard to that for which they would jointly ask the Court to decree regarding child custody and visitation, child support, alimony, property division and expenses. An executed copy of said agreement is attached hereto and made a part hereof.

The Court finds that said agreement between the Plaintiff and Defendant was considered by each party fairly and freely and with full opportunity for advice of counsel; that it was entered into understandingly; that the terms and conditions of said agreement are just and equitable; that it should be approved by the Court; and that the judgment of this Court should be consistent with the terms thereof.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff be, and she is hereby, granted an absolute divorce from the Defendant

this 4th day of September, 1964, and that this decree does not become absolute and take effect until the expiration of thirty (30) days from said date, provided however, that the thirty (30) days' period above mentioned shall be construed merely as a prohibition against contracting marriage with any other persons during that time, and the marital status of the Plaintiff and Defendant is finally dissolved as of the date of this decree and judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the agreement heretofore entered into between Plaintiff and Defendant and duly executed by said Plaintiff and Defendant, dated the 3rd day of September, 1964, be, and the terms and conditions of the same are, hereby approved and made the judgment of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Plaintiff, Beatrice Rinds Carland, shall have the sole care, custody and control of the minor children of Plaintiff and Defendant subject to reasonable rights of visitation on the part of Defendant at such times and in such manner as shall be agreed upon from time to time by the parties hereto, the Court hereby reserving jurisdiction over said children for all purposes, including the right of visitation, during their minority.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant shall pay to the Clerk of the District Court of Reno, County, Kansas for use by Plaintiff in the maintenance and support of said minor children the following sums in the following manner:

(a) For the education, maintenance and support of Ralph C. Carland, Jr., the sum of

$1,000.00 in substantially equal monthly payments during the period from September 1, 1964 to June 1, 1965.

(b) For the education, maintenance and support of Christopher Brian Carland, the sum of $900.00 per year in substantially equal monthly payments during the period from the date of this decree to September 1, 1965; and for the same child and the same purposes the sum of $1,000.00 per year in substantially equal monthly payments from September 1, 1965 until the said child reaches the age of twenty-one (21) years and thereafter until the end of the school year in which he attains that age if he is still pursuing his formal education at that time. The Court reserves the right to modify or change such order at any time that the circumstances justify such a change.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant shall pay to the Clerk of the District Court of Reno County, Kansas, as alimony for said Plaintiff, the sum of $100.00 per month until the death or remarriage of Plaintiff, whichever occurs first, in either of which events the obligation of Defendant to pay alimony shall terminate absolutely.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that when the obligation to pay child support for the benefit of the said Ralph C. Carland, Jr. has terminated under the terms of this decree, the monthly alimony payments to Plaintiff, if any are payable at that time, shall be increased by the amount of $25.00 per month over and above the amount of said alimony payments when said event occurs. It is likewise ordered and decreed that when the obligation to pay child support for

the benefit of the said Christopher Brian Carland has terminated under the terms of this decree, the monthly alimony payments payable to the Plaintiff, whatever their amount may be at that time, shall be increased on this account by the amount of $25.00 per month over and above the amount payable in alimony when said event occurs. The Court reserves the right, on a hearing with reasonable notice to the party affected, to modify the amounts or other conditions for the payment of alimony by the Defendant, but no modification shall be made without the consent of the party liable for the alimony if it has the effect of increasing or accelerating the liability for the unpaid alimony beyond that prescribed in this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that in accordance with the said agreement, Plaintiff shall have as her sole and separate property free from any right, title or interest which the Defendant may have or claim therein, the 1959 Buick sedan and the 1954 Ford Tudor sedan which are owned by Plaintiff and Defendant at the time of this divorce, all of the personal articles, clothing, furnishings, appliances (including radios and television sets), silverware, linens, art objects and all other household articles and personal property in the former residence of Plaintiff and Defendant, excepting the furniture in the bedroom occupied by Defendant during the marriage relationship. Likewise, in accordance with said agreement Defendant is ordered to pay the premiums on, and to make irrevocable designation of Plaintiff as the sole primary beneficiary under and of, the policies of insurance on the life of Defendant listed in Schedule "A" appended to the settlement Agreement to which reference has been made herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant shall have and retain as his sole and separate property free from any right, title or interest on the part of Plaintiff, the personal articles, clothing and all other personal effects owned by him, together with the furniture of the bedroom occupied by the Defendant during the marriage relationship.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Defendant pay to Plaintiff's attorneys as attorneys' fees herein the sum of $250.00 and the costs of this action taxed at $_____.

/s/ W. D. Gossage
Judge of the District Court

APPROVED:

MARTINDELL, CAREY, HUNTER & DUNN

By /s/ J. Richards Hunter
Attorneys for Plaintiff

SCHEDULE "A"

Policies of Insurance on Life of Ralph C. Carland

Policy No.	Company	Face Amount
17 083 285A	Metropolitan Life Ins. Co.	$ 5,000.00
22 127 306A	Metropolitan Life Ins. Co.	10,000.00
21 300 423	New York Life Ins. Co.	5,000.00
21 372 985	New York Life Ins. Co.	5,000.00
Ctf. 134181	Metropolitan Group Ins.	Current value, less 1000.00

SETTLEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 3rd day of September, 1964, by and between Beatrice Hinds Carland, Party of the First Part, and Ralph C. Carland, Party of the Second Part.

WITNESSETH THAT:

WHEREAS, the parties hereto are husband and wife, but are at present separated and there is no possibility of a reconciliation or resumption of married life together; and

WHEREAS, the parties have two minor children, Ralph C. Carland, Jr., age twenty (20) years, and Christopher Brian Carland, age sixteen (16) years; and

WHEREAS, the First Party has commenced a suit for divorce in the District Court of Reno County, Kansas against the Party of the Second Part, in Case No. 13926; and

WHEREAS, said parties desire to avoid the expense of litigation over any and all questions as to their respective rights and obligations, and as to the custody and control of their children; and

WHEREAS, said parties, having had full opportunity for independent advice from counsel of their choosing, and being fully informed as to their rights and obligations in this connection, have come to an agreement as to each and all of said matters;

NOW THEREFORE, in consideration of the mutual covenants, each to the other running, and all other good and valuable considerations, each to the other moving,

the parties hereto have agreed and do hereby agree as follows:

SEAL

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file and of record in this court. Done this 2nd day of October 1987

PAM MOSES
Clerk, District Court

By June Buhler
Deputy

I.

Second Party agrees to pay all of the expenses connected with said divorce action, including reasonable attorneys' fees for his own attorneys and for those of First Party, said fees to be fixed by agreement or by the Court.

II.

Second Party agrees that First Party shall have the sole care, custody and control of the minor children of First and Second Parties heretofore named, subject to reasonable rights of visitation on the part of Second Party at such times and in such manner as shall be agreed upon from time to time by the parties hereto. It is understood that such visitation arrangements are subject to the approval of the Court and that the Court reserves jurisdiction over said children for all purposes, including the right of visitation during their minority.

III.

The Second Party agrees to pay to the Clerk of the District Court of Reno County, Kansas as alimony for First Party the sum of One Hundred Dollars ($100.00) per month until the death or remarriage of First Party, whichever occurs first, in either of which events the obligation of Second Party to pay alimony shall terminate absolutely. When the obligation to pay child support for the benefit of the said Ralph C. Carland, Jr. has terminated under this agreement and under the judgment of the District Court, the monthly alimony payments for which provision has been made in this paragraph, if they are still payable at that time, shall be increased by the amount of Twenty Five Dollars ($25.00) per month in addition to the amount payable when said event occurs. Likewise, when the obligation to pay child support for the benefit of the said Christopher Brian Carland has terminated under this agreement and under the judgment of the District Court, the monthly alimony payments for which provision has been made in this paragraph, if they are still payable at that time, shall also be increased on this account by the amount of Twenty-five Dollars ($25.00) per month in addition to the amount payable for alimony when said event occurs.

IV.

Second Party agrees to pay the sum of One Thousand Dollars ($1000.00) in substantially equal payments during the period from September 1, 1964 to June 1, 1965, to the Clerk of the District Court of Reno County, Kansas, or in such other manner as may be agreed upon by the parties

in writing, for the use by the First Party in the education, maintenance and support of Ralph C. Carland, Jr. during his last year in college; and at the rate of Nine Hundred Dollars ($900.00) per year in substantially equal monthly payments to the Clerk of the District Court of Reno County, Kansas, during the period from the granting of said divorce until September 1, 1965, for the use by First Party in the support and education of Christopher Brian Carland; and the sum of One Thousand Dollars ($1000.00) per year to the said Clerk for the use of First Party in providing for the cost of the maintenance and support of the said Christopher Brian Carland until he reaches the age of twenty-one (21) years and thereafter until the end of the school year in which he attains that age. It is agreed that the amount of said payments is subject to all times to adjustment by said Court when such adjustment is required by changing circumstances. It is agreed that Second Party may make such additional contributions and payments such as those required by emergency health needs for the benefit of said sons, as he may desire, but that there shall be no legal obligation beyond the terms of this paragraph unless created by further orders of the Court.

V.

Second Party shall convey to First Party all of his interest in the 1959 Buick sedan and the 1954 Ford Tudor sedan which are owned by First and Second Parties, and shall likewise agree to make irrevocable designation of First Party as the sole primary beneficiary under and of the policies of insurance on the life of Second Party listed in schedule "A" hereto attached and made a part hereof

by reference, upon which the premiums shall be paid by Second Party.

VI.

First Party agrees that Second Party shall have as his sole and separate property free from any right, title or interest on her part, all of the personal articles, clothing and all other personal effects owned by him. It is likewise agreed that First Party shall have as her sole and separate property free from any right, title or interest on the part of Second Party, in addition to the automobiles heretofore provided for, all of the personal articles, clothing, furnishings, appliances (including radios and television sets), silverware, linens, art objects, and all other household articles and personal property in the former residence of First and Second Parties, excepting the furniture in the bedroom occupied by Second Party during the marriage relationship which shall become the separate property of Second Party.

VII.

This Agreement constitutes a full and complete settlement of property rights by and between the parties without in anywise attempting to limit or interfere with the continuing jurisdiction of the District Court of Reno County, Kansas with regard to the support and custody of the said minor children and with regard to visitation privileges in connection therewith.

VIII.

The District Court of Reno County, Kansas shall be requested, in the event of the granting of a divorce to

either party in the cause above mentioned, to approve the terms of this Agreement and to make its terms a part of the judgment of the Court.

IN WITNESS WHEREOF, the parties hereto have subscribed this Agreement in triplicate on the day and year above written at Hutchinson, Kansas, one executed copy to be retained by each party and one executed copy to be presented to the District Court of Reno County, Kansas for examination and approval in the aforementioned action.

/s/ Beatrice H. Carland
Party of the First Part

/s/ Ralph C. Carland
Party of the Second Part

STATE OF KANSAS, RENO COUNTY, SS:

BE IT REMEMBERED, That on this 3rd day of September, 1964, before me the undersigned, a Notary Public in and for said County and State aforesaid came Beatrice Hinds Carland, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/ Veronica Grandon
Notary Public

My Commission Expires:

August 7, 1966

STATE OF KANSAS, RENO COUNTY, SS:

BE IT REMEMBERED, That on this 3rd day of September, 1964, before me the undersigned, a Notary Public in and for said County and State aforesaid came Ralph C. Carland who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/ Veronica Grandon
Notary Public

My Commission Expires:

August 7, 1966

SCHEDULE "A"

Policies of Insurance on Life of Ralph C. Carland

Policy No.	Company	Face Amount
17 083 285A	Metropolitan Life Ins. Co.	$ 5,000.00
22 127 306A	Metropolitan Life Ins. Co.	10,000.00
21 300 423	New York Life Ins. Co.	5,000.00
21 372 985	New York Life Ins. Co.	5,000.00
Ctf. 134181	Metropolitan Group Ins.	Current value, less 1000.00

APPENDIX B

Mr. J. R. Jackson
Administration and Services
Actuarial – Met I & R

Re Group Life Insurance – 134181 –
Beneficiaries' Designation

Please note that the attached schedule is from my divorce decree of September 4, 1964, Case 13926. The decree provides that my Group Life Insurance is designated to go to my divorced wife – Beatrice Hinds Carland – in the amount of the current value, less $1,000.00 as of the date of the decree.

Therefore, I direct the Company to make the following beneficiary designations:

Primary beneficiaries:

BEATRICE HINDS CARLAND – divorced wife, $ 13,000.00

(Current value, less $ 1,000.00 as of date of divorce, September 4, 1964)

OLIVE KOHLMEYER CARLAND – present wife, Group Insurance over and above $ 13,000.00

Secondary Beneficiaries:

RALPH C. CARLAND, JR. and CHRISTOPHER BRIEN CARLAND

(Share and share alike or all to survivor)

I further request that the beneficiary designation be effective as of the date of this memo of record.

/s/ Ralph C. Carland
Ralph C. Carland, C.L.U.
Employee Number 134181
Personnel – Manpower Planning,
Recruiting and Development

February 15, 1974

APPENDIX C

Group Insurance &
Pensions

METROPOLITAN LIFE INSURANCE COMPANY

Designation of Beneficiary and Contingent Beneficiary(ies)

(Before Completing This Form. See the Reverse Side.)

IN ACCORDANCE WITH the explanations of Group Policy or Contract No. 50 N.Y.

I hereby revoke any previous beneficiary designation made in Certificate No. 134181 and designate as beneficiary thereon.

Name Olive Kohlmeyer, or Carland wife Age
(First) (Middle) (Last) (Relationship)

Residing at _____
(Number) (Street) (City) (State)

If the said beneficiary predeceases me.
I designate as contingent beneficiary(ies)

Name Ralph C. Carland Jr. Son Age
(First) (Middle) (Last) (Relationship)

Residing at _____
(Number) (Street) (City) (State)

Name _____
Christopher Brien Carland Son Age
(First) (Middle) (Last) (Relationship)

Residing at _____
(Number) (Street) (City) (State)

Name _____ Age
(First) (Middle) (Last) (Relationship)

Residing at _____
(Number) (Street) (City) (State)

If more than one contingent beneficiary is designated herein, payment shall be made in equal shares, or to the survivors in equal shares, or all to the last survivor.

I reserve the right at any time to change this designation.

Dated at N.Y. N.Y. this 1st day of March 1974

_____	/s/ Ralph C. Carland, Jr.
(Branch of Plans)	(Signature of Employee)
_____	
(Location)	

G500 (8-10) Printed in U.S.A.

APPENDIX D

TO THE METROPOLITAN LIFE
INSURANCE COMPANY
NEW YORK, NEW YORK

I hereby revoke any previous designations of beneficiary and contingent beneficiaries made by me under former Group Contract No. 50-R.P. (the Life insurance coverage now contained in Group Contract No. 50 G.L., Certificate No. 134181).

I hereby direct that any amount of Life insurance proceeds payable under Group Contract 50 G.L., Certificate No. 134181, at the time of my death, shall be paid at my death in accordance with the following designations:

Beneficiaries

I hereby designate as beneficiary to receive $13,000 of the Life insurance proceeds:

BEATRICE HINDS CARLAND MY FORMER WIFE AGE ___

residing at Wichita, Kansas

If the amount of Group Life insurance proceeds payable at my death is more than $13,000, for any amount in excess of $13,000, I hereby designate as beneficiary:

OLIVE KOHLMEYER CARLAND MY WIFE AGE 50

residing at 277 Avenue C, New York City, N.Y.

Contingent Beneficiaries

In the event Beatrice Hinds Carland or Olive Kohlmeyer Carland shall die before me, the

amount such beneficiary would have received had she survived me shall be payable to the following Contingent beneficiaries:

RALPH C. CARLAND, JR. MY SON AGE ___

residing at Wichita, Kansas

CHRISTOPHER BRIEN CARLAND MY SON AGE ___

residing at Newton, Kansas

In equal shares or all to the survivor.

The right to change the beneficiaries and contingent beneficiaries hereby designated without their consent is reserved.

Dated at N.Y. N.Y. March 1 1974

/s/ Joseph R. Jackson
Witness

/s/ Ralph C. Carland
Insured

RECORDED AT THE HOME OFFICE OF THE METROPOLITAN LIFE INSURANCE CO. IN NEW YORK, N.Y. David G. Sobel

[This is an ink stamp, not a part of the original form.]

APPENDIX E

Metropolitan Life
Insurance Company (seal)
One Madison Avenue,
New York, N.Y. 10010-3690

Metropolitan Life
AND AFFILIATED
COMPANIES

W.E. Sciannamea
Benefits Consultant
Managerial Action
Specialist Team
Benefits Administration
and Services

Martindell, Swearer, Cabbage
Ricksecker and Hertach
Attorneys at Law
400 Wiley Building
P.O. Box 1907
Hutchinson, Kansas 67504-1907

Attention: Andrew L. Oswald
Attorney

Re Ralph C. Carland (Deceased)
Certificate # 134181

Dear Mr. Oswald

In accordance with your March 14, 1988 request, it appears that Mr. Carland executed designation or revocation of beneficiary forms on the following dates:

1. December 13, 1960. In favor of Beatrice Carland;

2. August 14, 1961. In favor of Beatrice Carland (Optional Mode of Settlement);

3. March 7, 1967. Cancellation of Optional Mode of Settlement;

4. March 7, 1967. In favor of Christopher, Ralph Jr. and Beatrice Carland in equal shares;

5. February 15, 1974. In favor of Beatrice Carland and Olive Carland in designated shares;

6. March 1, 1974. In favor of Olive Carland; and

7. March 1, 1974. In favor of Beatrice Carland and Olive Carland in designated shares.

Attached are copies of the above mentioned forms for your review. Trusting this is the information desired and if I can be of any further assistance, please don't hesitate to write.

Yours truly

/s/ W. E. Sciannamea
W. E. Sciannamea
Benefits Consultant
MAST Team
Benefits Administration & Services

March 28, 1988

APPENDIX F

Ms. Lynn I. Box
Group National Accounts
Group Life Claims (Death)
Utica, N.Y.

Re Carland, Ralph C.
Certificate #134181

Pursuant to our telephone conversation, I am enclosing a copy of Mr. Carland's latest Group Life Insurance beneficiary designation dated March 1, 1974. Unfortunately, this was not forwarded to you when the death claim was originally reported and processed – thus resulting in the widow, Olive Carland, incorrectly receiving the entire proceeds.

We have recently communicated with the widow and have advised her as to the error we made in paying out the Life Insurance proceeds. She has been gracious enough to forward a check, which is enclosed in the amount of $15,000. Mrs. Carland erred in the amount of the check as we had only requested $13,000.

Would you please credit the account, out of which the proceeds paid, for $15,000 and issue a check to both Beatrice Carland ($13,000) and Olive Carland ($2,000) respectively? I would appreciate it if you would apprise me when this has been accomplished.

/s/ David G. Sobel

David G. Sobel
Benefits Manager
MAST Team
Benefits Administration & Services

September 11, 1987

APPENDIX G

REFERRAL SHEET

INSURED: Ralph G. Carland

BENEFICIARY: see recent desig. of 3-1-74

GROUP: Met Life NUMBER: 5029

AMOUNT CLAIMED: 51,480

PROBLEM	FUNDS
___ INSURANCE AMOUNT ___	___ U.S.
___ SUB CODE _____	___ CANADIAN
___ PAY POINT _____	___ PUERTO RICAN
___ OTHER	

Please see attached corresp. from David Sabel. Please note that desig. form submitted is dated the same as the one we processed claim by but designates differently. Please advise as to how as far as accounts etc.

/s/ L. Box — SIGNATURE

9-17-8 — DATE

ACTION TO BE TAKEN

Claim was paid 5/22/87 – all proceeds out in TCA – per design rec'd. – Olive Carland. Chris – we've rec'd. a copy of a bene. design. (same date 3/1/74) naming Beatrice Carland – ex wife to receive $13,000 and balance to Olive from David Sobel-Mgr. an Admin. Also, we have a check from Olive for $15,000 payable to Metropolitan Mr. Sobel is requesting we debit TCA account for $15,000, issue 2 checks, one to Beatrice for $13,000 and one to Olive for $2,000 – can we do this?

[continued on next page]

Since both desig. have the same date how do we know which one is the latest? Pose this? to David Sobel (phone call) CR 9/22/87

Sep. 22, 1987
DATE

SIGNATURE

APPENDIX H

Metropolitan Life
Insurance Company (seal) **Metropolitan Life**
One Madison Avenue, AND AFFILIATED
New York, N.Y. 10010-3690 COMPANIES

W.E. Sciannamea
Benefits Consultant
Managerial Action
Specialist Team
Benefits Administration
and Services

Martindell, Swearer, Cabbage
Ricksecker and Hertach
Attorneys at Law
400 Wiley Building
P.O. Box 1907
Hutchinson, Kansas 67504-1907

Attention of Andrew L. Oswald

Re Ralph C. Carland
Certificate #134181

Dear Mr. Oswald

This letter is in response to your inquiry regarding the group life insurance proceeds on Ralph C. Carland, a former employee of Metropolitan Life Insurance Company. As requested, enclosed please find a copy of the Summary Plan Description.

As you know, Beatrice Carland and Ralph Carland were divorced on September 4, 1964. The divorce decree required Mr. Carland to designate Beatrice Carland as beneficiary for his group life insurance in the amount of

"Current value, less 1000.00." On September 4, 1964, Mr. Carland had group life insurance in the amount of $14,000.00. Accordingly, Mr. Carland was required to designate Beatrice Carland as beneficiary pursuant to the divorce decree for the amount of $13,000.00

Mr. Carland complied with the divorce decree and on March 1, 1974, he designated Beatrice Carland as beneficiary for $13,000.00 and Olive Carland as beneficiary for any amount in excess of $13,000.00. Enclosed please find a copy of the March 1, 1974 designation of beneficiary form.

At the time of Mr. Carland's death, Mr. Carland was covered for $51,480.00. Pursuant to the divorce decree and the designation of beneficiary form, we paid Olive Carland her share of the proceeds plus interest. We are enclosing a check payable to Beatrice Carland in the amount of $13,623.99, representing her share of the proceeds plus interest.

In view of the foregoing, we have no further liability in this matter.

You may request a review of the claim by writing directly to Metropolitan Life Insurance Company at the address indicated at the top of this letter. When requesting this review you should state the reason for believing that the claim was improperly denied and you may submit any information, questions or comments deemed appropriate. Metropolitan will reevaluate all of the information and you will be notified in a timely manner of our findings.

If you have any questions, please feel free to contact me.

Very truly yours

/s/ W. E. Sciannamea
W. E. Sciannamea
Benefits Consultant
Managerial Action Specialist Team
Benefits Administration and Services
Ext. 2560

February 2, 1988